



- (1) Whether claimant suffered accidental injury arising out of and in the course of her employment on the date alleged.
- (2) Whether respondent was provided notice of claimant's alleged accidental injury and, if not, whether respondent was prejudiced by this lack of notice.
- (3) Whether written claim was timely made pursuant to K.S.A. 44-520a.
- (4) Whether claimant is entitled to past, present, future and unauthorized medical treatment.
- (5) What, if any, is the nature and extent of claimant's injury and/or disability?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant was granted an award by the Administrative Law Judge as a result of injuries suffered on or about March 2, 1991. Claimant was awarded 40.57 weeks temporary total disability compensation at the rate of \$278 per week and permanent partial disability compensation thereafter. The Administrative Law Judge found that claimant, while entitled to disability compensation, was also receiving disability insurance benefits during the same time frame under coverage provided by respondent. The Administrative Law Judge found claimant would receive a windfall if she were allowed to receive both the temporary total disability compensation and disability insurance payments at the same time. Offset against the disability benefits was then ordered from the temporary total disability compensation.

The Appeals Board finds no authority in the Workers Compensation Act for the Administrative Law Judge to award such an offset to the respondent. While an employer may be entitled to a credit under K.S.A. 44-510a for prior injuries, for which claimant may be entitled to workers compensation benefits, K.S.A. 44-510a does not apply in this situation as the disability benefits provided to claimant do not stem from a prior workers compensation injury for which claimant received compensation or for which compensation was collectable.

In certain situations regarding injuries occurring post-July 1, 1993, respondent might be entitled to a reduction in the claimant's functional impairment for preexisting conditions under K.S.A. 44-501(c) as amended by S.B. 649 (1996). Likewise an offset under K.S.A. 44-501(h) as amended by S.B. 649 (1996), may be proper if the claimant were receiving retirement benefits under certain retirement systems. Neither circumstance exists in this case.

The exclusivity of the provisions of the Workers Compensation Act mandate that offsets against temporary or permanent benefits be controlled by language propounded by the legislature. Absent specific authorization to offset the disability benefits against claimant's temporary total disability compensation, the Appeals Board finds the

Administrative Law Judge erred in so doing. The entitlement by claimant to temporary total compensation and permanent partial disability compensation in this matter is not affected by claimant's additional entitlements to third-party disability payments. The Administrative Law Judge's Award to the contrary should be reversed.

With regard to the additional issues raised by respondent, the Appeals Board finds proper the findings and conclusions of the Administrative Law Judge as set out in some detail in the Award. It is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge with regard to the issues raised by respondent are appropriate and accurate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein. The Administrative Law Judge effectively and accurately analyzed the medical and factual evidence and properly awarded claimant the disability to which claimant is entitled based upon the facts and evidence in this case.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated January 3, 1996, awarding claimant, Leeta K. Luebbert, compensation against the respondent, North American Phillips Lighting, and its insurance carrier, Travelers Insurance Company, should be, and is hereby, affirmed in part and reversed in part as follows:

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Leeta K. Luebbert, and against the respondent, North American Phillips Lighting, and its insurance carrier, Travelers Insurance Company, for an accidental injury which occurred March 2, 1991. Claimant is entitled to 40.57 weeks temporary total disability compensation at the rate of \$278.00 per week totalling \$11,278.46, followed by 24 weeks permanent partial disability at the rate of \$127.85 per week totalling \$3,068.40 and, after June 1, 1992, 51.43 weeks permanent partial general body disability at the rate of \$128.25 per week totalling \$6,595.90 for a 42.25% permanent partial general body disability. From and after May 27, 1993, claimant is entitled to 299 weeks permanent partial general body disability at the rate of \$39.34 per week totalling \$11,762.66 for a 13% permanent partial general body disability making a total award of \$32,705.42.

As of April 23, 1996, there would be due and owing to claimant 40.57 weeks temporary total disability compensation at the rate of \$278.00 per week in the sum of \$11,278.46, followed thereafter by 24 weeks permanent partial disability compensation at the rate of \$127.85 per week (based upon an average weekly wage of \$453.88) totalling \$3,068.40, followed thereafter by 51.43 weeks permanent partial disability compensation at the rate of \$128.25 per week (based upon an average weekly wage of \$455.29 per week) in the sum of \$6,595.90 for a 42.25% permanent partial general body work disability, followed by 152.43 weeks permanent partial general body disability (based upon a 13% permanent partial general body disability) at the rate of \$39.34 per week in the sum of \$5,996.60, all of which is due and owing in one lump sum minus amounts previously paid. Thereafter, the remaining balance should be paid for 146.57 weeks in the sum of \$39.34 per week until fully paid or until further order of the Director.

Claimant is entitled to medical expenses as listed in the Award of the Administrative Law Judge and unauthorized medical expenses upon presentation of an itemized statement verifying same within the statutory limits set forth in K.S.A. 1990 Supp. 44-510.

Future medical is awarded upon proper application to and approval by the Director.

Claimant's attorney fee contract is approved insofar as it is not in contravention of K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Owens, Brake & Associates	
Deposition of Tony Buccigrossi	\$285.00
Deposition of Donald Bender	\$110.10
Deposition of Larry E. Burnett, D.O.	\$278.65
Deposition of Leeta Kristin Luebbert	\$312.25
Regular Hearing Transcript	\$191.63
Deposition of Tim Rowe	\$115.19
Deposition of Dr. Ali Manguoglu	\$278.40
Deposition of Randall Jasperson, D.C.	\$167.60
 Don K. Smith & Associates	
Deposition of Dr. Lawrence Blaty	\$210.50
Deposition of James Molski	\$257.00
 Owens, Brake, Cowan & Associates	
Deposition of Leeta K. Luebbert	\$164.70

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1996.

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BOARD MEMBER

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c: John M. Ostrowski, Topeka, KS  
C. Stanley Nelson, Salina, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director